

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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IN RE:

Simaris Diaz,

CASE NO. 05-23732 jcn
Chapter 13

DEBTOR.

JUDGE John C. Ninfo, II

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AFFIRMATION OF NONCOMPLIANCE

1. Karen Sheehan, an attorney at law duly admitted to practice before this court and the Courts of the State of New York, hereby affirms the following to be true under the penalty of perjury.

2. A Motion for Relief from the Automatic Stay was brought by Chase Home Finance, LLC on November 16, 2005 and was granted by an Order Conditionally Granting Relief from the Automatic Stay signed by this Court on January 13, 2006 (the "Conditional Order"). A copy of the Conditional Order is annexed hereto as Exhibit "A".

3. Pursuant to said Conditional Order, the Debtor was to pay the sum of \$2,954.36, representing post-petition arrears on her mortgage, on or before February 28, 2006.

4. In addition, the Debtor was to commence making regular monthly payments to Chase Home Finance, LLC.


5. That upon information furnished by Chase Home Finance, LLC, the Debtor has failed to make said payments as required by the Conditional Order.

6. Pursuant to the conditional Order, the Debtors and Debtor's attorney have been given a Ten (10) Day Notice to Cure. The Debtor has failed to comply with the Notice to Cure. A copy of the Notice to Cure is annexed hereto as Exhibit "B".

WHEREFORE as the Debtor has failed to comply with the requirements of the Conditional Order upon the filing of this affirmation, the automatic stay is vacated with respect to the Mortgage held by Chase Home Finance, LLC to the extent necessary to allow Chase Home Finance, LLC, and its successors and/or assigns to commence and/or continue mortgage foreclosure and eviction proceedings on the real property located at 132 Cherry Road, Rochester, New York 14612.

Dated: May 22, 2007
Plainview, New York

Respectfully submitted,



ROSICKI, ROSICKI & ASSOCIATES, PC
By: Karen Sheehan, Esq. (5379)
Attorneys for Movant
51 East Bethpage Road
Plainview, NY 11803
(516) 741-2585

Exhibit A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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IN RE:
Simaris Diaz,

CASE NO. 05-23732 jcn
CHAPTER 13

DEBTOR.

JUDGE: John C. Ninfo, II

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**ORDER CONDITIONALLY GRANTING
RELIEF FROM THE AUTOMATIC STAY**

Upon the Application dated November 16, 2005, (the "Application") of Chase Home Finance, LLC (the "Movant"), by its attorneys, Rosicki, Rosicki & Associates, P.C., seeking an Order: (i) modifying and terminating the automatic stay to permit the Movant to exercise all of its rights and remedies with respect to certain collateral consisting of the real property known as 132 Cherry Road, Rochester, NY 14612, (the "Premises"); and (ii) granting Movant such other and further relief as the Court deems just and proper; and

The Application having come before this Court to be heard on December 14, 2005; and the parties having agreed to the entry of the within Conditional Order, it is hereby

ORDERED that the Motion of Movant is conditionally granted as set forth below, and it is further

A. **ORDERED** that on or before February 28, 2006, Simaris Diaz (the "Debtor"), shall pay Movant all post-petition arrears on her mortgage; such payments to include principal, interest, and reasonable attorney fees in the amount of

✓ \$500.00 for a total sum of \$2,954.36; such sum shall be good through December 31, 2005, and payment shall be made by certified funds and mailed to:

Chase Home Finance, LLC
10790 Rancho Bernardo Road
San Diego, CA 92127
c/o Bankruptcy Department.

The payments shall be made as follows:

\$1,400.00 due on or before December 31, 2005
\$777.18 due on or before January 31, 2006
\$777.18 due on or before February 28, 2006

And it is further,

B. **ORDERED** that the Debtor shall make timely regular monthly payments to Chase Home Finance, LLC at the address listed below by the 1st day of each and every month, commencing with the January 1, 2006 payment.

C. **ORDERED** that in the event the Debtor fails to tender the sums due under paragraph "A" hereinabove, or fails to make payments described in paragraph "B" hereinabove, and thereafter fails to comply with a ten (10) day Notice to Cure, then upon the filing of an Affirmation of Non-Compliance, the automatic stay is vacated with respect to the mortgage held by Chase Home Finance, LLC to the extent necessary to allow Chase Home Finance, LLC, its successors and/or assigns, to commence and/or continue mortgage foreclosure and eviction proceedings on the real property located at 132 Cherry Road, Rochester, NY 14612, and it is further

D. **ORDERED** that in the event the Debtor fails to tender the sums due under paragraph "A" and/or the payments due pursuant to paragraph "B" hereinabove, and if three (3) notices to cure had previously been sent to Debtor and Debtor's attorney pursuant to paragraph "C" hereinabove, (for three previous defaults under this order), the automatic stay will be vacated without further notice to the Debtor or Debtor's attorney upon filing of an Affirmation of Non-Compliance, and it is further

E. **ORDERED** that the Trustee retain any and all interest that the Trustee may have in any surplus monies that may be produced from a foreclosure sale of the property, and will be noticed of any such sale of the property and surplus money proceedings.

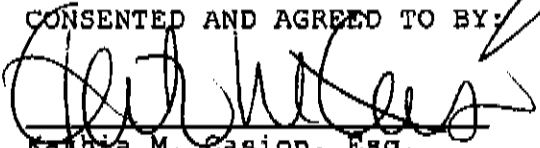
DATED:

, New York

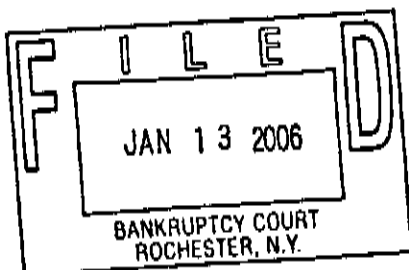
1/13/06

Hon. John C. Ninfo, II
United States Bankruptcy Judge

CONSENTED AND AGREED TO BY:


Kathia M. Casion, Esq.
Attorney for Debtor

Movant shall mail a copy of this Order to Debtor, and if represented in this matter, Debtor's attorney, within 10 days of the date of this Order.



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Simaris Diaz,

Debtor.

**ORDER CONDITIONALLY GRANTING RELIEF
FROM THE AUTOMATIC STAY**

ROSICKI, ROSICKI & ASSOCIATES, P.C.

Attorneys for Movant
152 Islip Avenue, Ste. 18
Islip, New York 11751
(631) 224-4678

EXHIBIT B

ROSICKI, ROSICKI & ASSOCIATES, P.C.

ATTORNEYS AT LAW

Office: 51 East Bethpage Road

Plainview, New York 11803

Telephone (516) 741-2585

Facsimile (516) 873-7243

WE ARE A DEBT COLLECTOR AND ARE ATTEMPTING TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

May 7, 2007

Simaris Diaz
132 Cherry Road
Rochester, NY 14612

Re: Debtor: Simaris Diaz
Loan No. 17708108
Case No. 05-23732 jcn
Premises: 132 Cherry Road, Rochester, New York 14612

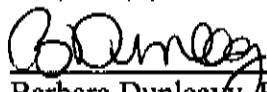
NOTICE TO CURE

Dear Ms. Diaz:

This Firm represents the interests of Chase Home Finance, LLC, secured creditor and mortgage holder of the above referenced property. This letter is to advise you that you are in default under the Order Conditionally Granting Relief from the Automatic Stay (the "Order") "Ordered" by the Court on January 13, 2006. Pursuant to the Order, you were required to tender timely regular monthly payments by the first day of each and every month, commencing with the January 1, 2006 payment. However, to date, you have failed to make the April 1, 2007 and May 1, 2007 payments in the monthly amount of \$878.82 each. This is to inform you that the sum of \$1,757.64 is in arrears through May 7, 2007.

Accordingly, you must tender payment in the sum of \$1,757.64 no later than May 17, 2007. Failure to do so will result in the filing of an Affirmation of Non-Compliance with the Court and the stay being vacated with respect to the subject premises.

Very truly yours,


Barbara Dunleavy, Esq.

cc: Kathia M. Casion, Esq.
Legal Aid Society
1 West Main Street, Suite 800
Rochester, NY 14614

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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IN RE:

Simaris Diaz,

DEBTOR.
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CASE NO. 05-23732 jcn

CHAPTER 13
JUDGE John C. Ninfo, II

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

Justine Neiro, being duly sworn, deposes and says:
I am not a party to this action, am over 18 years of age and reside in Nassau County, New York.

On May 24, 2007, I served the within Affirmation of Non-Compliance on the following parties, by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Simaris Diaz
132 Cherry Road
Rochester, NY 14612

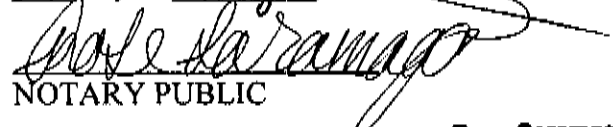
Kathia M. Casion, Esq.
Legal Aid Society
1 West Main St., Suite 800
Rochester, NY 14614

George M. Reiber, Esq.
3136 S. Winton Road, Suite 206
Rochester, NY 14623


Justine Neiro

Sworn to before me this

24th day of May, 2007


NOTARY PUBLIC

Rose Saramago
Notary Public State of New York
No. 01SA6163060
Qualified in Suffolk County

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

Simaris Diaz,

Debtor.

AFFIRMATION OF NONCOMPLIANCE

ROSICKI, ROSICKI & ASSOCIATES, P.C.

Attorneys for Movant
51 East Bethpage Road
Plainview, New York 11803
(516) 741-2585